

# Declaration for Patent Application

# COPY

As a below named inventor, I hereby declare that:

Docket Number: 1522.0030004MAC/BJD

My residence, post office address and citizenship are as stated below next to my name.

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter that is claimed and for which a patent is sought on the invention entitled: Compositions and Methods for Non-targeted Activation of Endogenous Genes, the specification of which is attached hereto unless the following box is checked:

- ☒ was filed on March 26, 1999  
as United States Application Number or PCT International Application Number 09/276,820; and  
was amended on \_\_\_\_\_ (if applicable).

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information that is material to patentability as defined in 37 C.F.R. § 1.56.

I hereby claim foreign priority benefits under 35 U.S.C. § 119(a)-(d) or § 365(b) of any foreign application(s) for patent or inventor's certificate, or § 365(a) of any PCT international application, which designated at least one country other than the United States listed below, and have also identified below any foreign application for patent or inventor's certificate, or PCT international application having a filing date before that of the application on which priority is claimed.

Prior Foreign Application(s)

(Application No.)	(Country)	(Day/Month/Year Filed)	Priority Claimed
_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No

I hereby claim the benefit under 35 U.S.C. § 119(e) of any United States provisional application(s) listed below.

_____	_____
(Application No.)	(Filing Date)
_____	_____
(Application No.)	(Filing Date)

I hereby claim the benefit under 35 U.S.C. § 120 of any United States application(s), or under § 365(c) of any PCT international application designating the United States, listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT international application in the manner provided by the first paragraph of 35 U.S.C. § 112, I acknowledge the duty to disclose information that is material to patentability as defined in 37 C.F.R. § 1.56 that became available between the filing date of the prior application and the national or PCT international filing date of this application.

<u>09/263,814</u>	<u>March 8, 1999</u>	<u>Pending</u>
(Application No.)	(Filing Date)	(Status – patented, pending, abandoned)
<u>09/253,022</u>	<u>February 19, 1999</u>	<u>Pending</u>
(Application No.)	(Filing Date)	(Status – patented, pending, abandoned)
<u>09/159,643</u>	<u>September 24, 1998</u>	<u>Abandoned</u>
(Application No.)	(Filing Date)	(Status – patented, pending, abandoned)
<u>08/941,223</u>	<u>September 26, 1997</u>	<u>Abandoned</u>
(Application No.)	(Filing Date)	(Status – patented, pending, abandoned)

## ASSIGNMENT

In consideration of the sum of One Dollar (\$1.00) or equivalent and other good and valuable consideration paid to each of the undersigned inventor(s): John J. HARRINGTON, Bruce SHERF and Stephen RUNDLETT, the undersigned inventor(s) hereby sell(s) and assign(s) to Athersys, Inc. (the Assignee) his/her entire right, title and interest, including the right to sue for and collect for all past, present and future damages:

check applicable box(es) ☒ for the United States of America (as defined in 35 U.S.C. § 100),  
☒ and throughout the world,

(a) in the invention(s) known as Compositions and Methods for Non-targeted Activation of Endogenous Genes for which application(s) for patent in the United States of America has (have) been executed by the undersigned on July 1, 1999 (also known as United States Application No. 09/276,820, filed March 26, 1999), in any and all applications thereon, in any and all Letters Patent(s) therefor, and

(b) in any and all applications that claim the benefit of the patent application listed above in part (a), including continuing applications, reissues, extensions, renewals and reexaminations of the patent application or Letters Patent therefor listed above in part (a), to the full extent of the term or terms for which Letters Patents issue, and

(c) in any and all inventions described in the patent application listed above in part (a), and in any and all forms of intellectual and industrial property protection derivable from such patent application, and that are derivable from any and all continuing applications, reissues, extensions, renewals and reexaminations of such patent application, including, without limitation, patents, applications, utility models, inventor's certificates, and designs together with the right to file applications therefor; and including the right to claim the same priority rights from any previously filed applications under the International Agreement for the Protection of Industrial Property, or any other international agreement, or the domestic laws of the country in which any such application is filed, as may be applicable;

all such rights, title and interest to be held and enjoyed by the above-named Assignee, its successors, legal representatives and assigns to the same extent as all such rights, title and interest would have been held and enjoyed by the Assignor had this assignment and sale not been made.

The undersigned inventor(s) agree(s) to execute all papers necessary in connection with the application(s) and any continuing (continuation, divisional, or continuation-in-part), reissue, reexamination or corresponding application(s) thereof and also to execute separate assignments in connection with such application(s) as the Assignee may deem necessary or expedient.

The undersigned inventor(s) agree(s) to execute all papers necessary in connection with any interference or patent enforcement action (judicial or otherwise) related to the application(s) or any continuing (continuation, divisional, or continuation-in-part), reissue or reexamination application(s) thereof and to cooperate with the Assignee in every way possible in obtaining evidence and going forward with such interference or patent enforcement action.

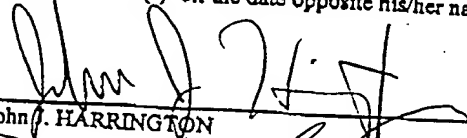
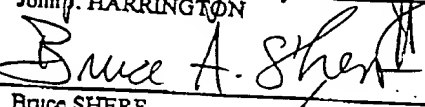

The undersigned inventor(s) hereby represent(s) that he/she has full right to convey the entire interest herein assigned, and that he/she has not executed, and will not execute, any agreement in conflict therewith.

The undersigned inventor(s) hereby grant(s) Robert Greene Sterne, Esquire, Registration No. 28,912; Edward J. Kessler, Esquire, Registration No. 25,688; Jorge A. Goldstein, Esquire, Registration No. 29,021; Samuel L. Fox, Esquire, Registration No. 30,353; David K.S. Cornwell, Esquire, Registration No. 31,944; Robert W. Esmond, Esquire, Registration No. 32,893; Tracy-Gene G. Durkin, Esquire, Registration No. 32,831; Michele A. Cimbal, Esquire, Registration No. 33,851; Michael B. Ray, Esquire, Registration No. 33,997; Robert E. Sokohl, Esquire, Registration No. 36,013; Eric K. Steffe, Esquire, Registration No. 36,688; Michael Q. Lee, Esquire,

MAC  
Reg No. 33851

Registration No. 35,239; and Steven R. Ludwig, Registration No. 36,203, of STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C., 1100 New York Avenue, N.W., Suite 600, Washington, D.C. 20005-3934, power to insert in this assignment any further identification that may be necessary or desirable in order to comply with the rules of the United States Patent and Trademark Office for recordation of this document.

IN WITNESS WHEREOF, executed by the undersigned inventor(s) on the date opposite his/her name.

Date: <u>7/1/99</u>	Signature of Inventor: <u></u> John F. HARRINGTON
Date: <u>7/1/99</u>	Signature of Inventor: <u></u> Bruce SHERF
Date: <u>7/1/99</u>	Signature of Inventor: <u></u> Stephen RINDLETT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

John J. Harrington, et al.

Serial No.: 09/515,124

Filed: February 27, 2000

For: Compositions and Methods for Non-  
Targeted Activation of Endogenous Genes

Art Unit: Not Assigned

Examiner: Not Assigned

Atty. Docket: 0221-0003O

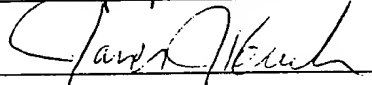
**REVOCATION OF PRIOR POWER OF ATTORNEY AND  
APPOINTMENT OF NEW ATTORNEYS OF RECORD**

Honorable Commissioner of  
Patents and Trademarks  
Washington, D.C. 20231

Sir:

The undersigned, having express authority to represent Athersys, Inc. the assignee of the entire right, title, and interest in the above-identified application, hereby revokes all powers of attorney heretofore given in the above-identified application, and appoints as his attorneys Mark R. Shanks, Registration No. 33,781, Toni-Junell Herbert, Registration No. 34,348, David W. Woodward, Registration No. 35,020, Keith D. Hutchinson, Registration No. 43,687, Mark J. Pino, Registration No. 43,858, Deanna L. Baxam, Registration No. 45,266, Joseph G. Contrera, Registration No. 44,628, Chalin A. Smith, Registration No. 41,569, Shelly Guest Cermak, Registration No. 39,571, Suzannah Sundby, Registration No. 43,172 all of SHANKS & HERBERT, telephone (703) 683-3600, TransPotomac Plaza, 1033 N. Fairfax Street, Suite 306, Alexandria, VA 22314 and Anne Brown, Registration No. 36,463 of Athersys, Inc. with full power of substitution,

association, and revocation, to prosecute said application and to transact all business in the United States Patent and Trademark Office connected therewith.

FOR: Athersys, Inc.  
SIGNATURE:   
BY: James J. Kovach  
TITLE: Executive V.P. & COO  
DATE: 6/19/00

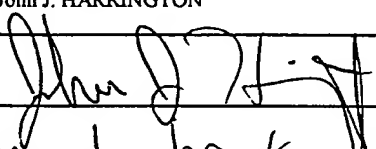
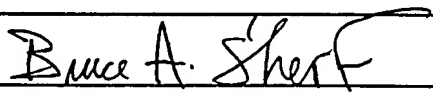
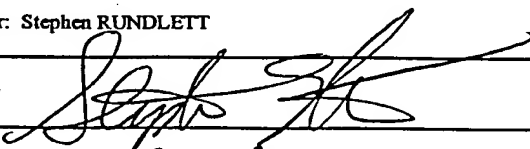
Send Correspondence to:

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.  
1100 New York Avenue, N.W.  
Suite 600  
Washington, D.C. 20005-3934

Direct Telephone Calls to:

(202) 371-2600

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of sole or first inventor: John J. HARRINGTON	
Signature of sole or first inventor	 7/1/99 Date
Residence	6487 Meadowbrook Dr., Mentor OH 44060
Citizenship	USA
Post Office Address	6487 Meadowbrook Dr., Mentor OH 44060
Full name of second inventor: Bruce SHERF	
Signature of second inventor	 7/1/99 Date
Residence	7012 Avon Lk Rd, Spencer, OH, 44275
Citizenship	USA
Post Office Address	7012 Avon Lk. Rd, Spencer, OH, 44275
Full name of third inventor: Stephen RUNDLETT	
Signature of third inventor	 7/1/99 Date
Residence	703 Bell Rd. Chagrin Falls, OH, 44022
Citizenship	USA 70
Post Office Address	703 Bell Rd. Chagrin Falls, OH 44022

(Supply similar information and signature for subsequent joint inventors, if any)

Statement Claiming Small Entity Status  
(37 C.F.R. §§ 1.9(d) and 1.27(c)) -- Small Business Concern

COPY

Applicant or Patentee: John J. HARRINGTON, Bruce SHERF and Stephen RUNDLETT

Appl. or Patent No.: 09/276,820

Filed or Issued: March 26, 1999

Attorney Docket No. 1522.0030004/MAC/BJD

For: Compositions and Methods for Non-targeted Activation of Endogenous Genes

I hereby state that I am

- ☐ the owner of the small business concern identified below:  
☒ an official of the small business concern empowered to act on behalf of the concern identified below:

NAME OF SMALL BUSINESS CONCERN Athersys, Inc.

ADDRESS OF SMALL BUSINESS CONCERN 11000 Cedar Avenue, Cleveland, Ohio 44106

I hereby state that the above identified small business concern qualifies as a small business concern as defined in 13 C.F.R. § 121.3-18, and reproduced in 37 C.F.R. § 1.9 (d), for purposes of paying reduced fees under section 41(a) and (b) of Title 35, United States Code, in that the number of employees of the concern, including those of its affiliates, does not exceed 500 persons. For purposes of this statement, (1) the number of employees of the business concern is the average over the previous fiscal year of the concern of the persons employed on a full-time, part-time or temporary basis during each of the pay periods of the fiscal year, and (2) concerns are affiliates of each other when either, directly or indirectly, one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both.

I hereby state that rights under contract or law have been conveyed to and remain with the small business concern identified above with regard to the invention described in:

- ☐ the specification filed herewith with title as listed above.  
☒ the application identified above.  
☐ the patent identified above.

If the rights held by the above identified small business concern are not exclusive, each individual, concern or organization having rights in the invention must file separate statements indicating their status as small entities, and no rights to the invention are held by any person, other than the inventor, who would not qualify as an independent inventor under 37 C.F.R. § 1.9(c) if that person made the invention or by any concern which would not qualify as a small business concern under 37 C.F.R. § 1.9(d) or a nonprofit organization under 37 C.F.R. § 1.9(e).

Each person, concern or organization having any rights in the invention (other than the small business concern named above) is listed below:

- ☒ no such person, concern, or organization exists.  
☐ each person, concern, or organization is listed below.

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

☐ INDIVIDUAL

☒ SMALL BUSINESS CONCERN

☐ NONPROFIT ORGANIZATION

Separate statements are required from each named person, concern or organization having rights to the invention averring to their status as small entities. (37 C.F.R. § 1.27)

I acknowledge the duty to file, in this application or patent, notification of any change in status resulting in loss of entitlement to small entity status prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as a small entity is no longer appropriate. (37 C.F.R. § 1.28(b))

NAME OF PERSON SIGNING \_\_\_\_\_

TITLE IN ORGANIZATION \_\_\_\_\_

ADDRESS OF PERSON SIGNING \_\_\_\_\_

SIGNATURE \_\_\_\_\_

DATE \_\_\_\_\_

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Harrington, *et al.* Group Art Unit: Not Yet Assigned  
Appl. No.: Not Yet Assigned Examiner: Not Yet Assigned  
Filed: Filed Concurrently Herewith  
For: COMPOSITIONS AND METHODS FOR NON-TARGETED ACTIVATION  
OF ENDOGENOUS GENES

February 25, 2000

**REQUEST FOR TRANSFER OF COMPUTER READABLE FORM OF SEQUENCE  
LISTING UNDER 37 CFR §1.821(e) AND MPEP 2422.05**

Box Patent Application  
Assistant Commissioner for Patents  
Washington, DC 20231

Sir:

Applicants hereby request transfer of previously filed sequence information into the above-mentioned application, concurrently filed herewith.

I hereby state that the paper copy of the sequence listing, attached hereto, is identical to the computer-readable copy of the sequence listing filed in U.S. Application Serial No. 09/276,820, filed on March 26, 1999. In accordance with 37 CFR §1.821(e) and MPEP 2422.05, please use the computer-readable form filed in that application as the computer-readable form for the above-mentioned application. It is understood that the Patent and Trademark Office will make the necessary change in application number and filing date for the present application.

Respectfully submitted,



Anne Brown  
Attorney for Applicant  
Registration No. 36,463

**ALSTON & BIRD LLP**  
Post Office Drawer 34009  
Charlotte, NC 28234  
Tel Raleigh Office (919) 420-2200  
Fax Raleigh Office (919) 420-2260

"Express Mail" Mailing Label Number EL039496210US

Date of Deposit: February 25, 2000

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to Box Patent Application, Assistant Commissioner of Patents, Washington, DC 20231.

  
Nora C. Martinez